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December 3, 2019

By ECF

The Honorable Loretta A. Preska
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Chevron Corp. v. Steven Donziger, et al.;
Criminal Docket Number 19-561 (LAP);
Civil Docket Number 11-0691

Dear Judge Preska:

On behalf of Steven Donziger, I respectfully submit this letter in advance of tomorrow's conference to preview a motion I expect to make in support of reconsideration of the Court's ruling on the conditions of Mr. Donziger's pretrial release. *See, e.g., Perez v. Progenics Pharm., Inc.*, 46 F. Supp. 3d 310, 314 (S.D.N.Y. 2014) (reconsideration may be appropriate where the Court overlooked factual matters, to correct a clear error or prevent manifest injustice).

In denying Mr. Donziger's application for relief, the Court relied on Special Prosecutor Glavin's representation that Mr. Donziger has "ties to Ecuador, including to very high-level government officials that would include the former president of Ecuador Correa. This is not a few people he's friendly with but some high-level officials there." Transcript of November 25, 2019 at 6, 12. Ms. Glavin was either mistaken or unaware that former Ecuadorian President Rafael Correa has lived in exile in Belgium since 2017. He has no influence with the current government in Ecuador, which exists in opposition to him. *See "Ex-Ecuador president wants new vote, denies planning coup," AP News, October 10, 2019*¹; *"Hundreds Arrested in Ecuador Unrest," The New York Times, October 4, 2019*²; *"In Ecuador, Assange's expulsion*

¹ Available at <https://apnews.com/2ba31ddc50854e93af2b356a771efe79>.

² Available at <https://www.nytimes.com/2019/10/04/world/americas/hundreds-arrested-in-ecuador-unrest.html>.

reflects desire for better relations with the U.S.,” The Washington Post, April 11, 2019.³ More, three Ecuadorian legislators aligned with Correa recently took refuge in the Mexican Embassy in Quito amid recent riots and upheaval. *“3 Ecuador opposition lawmakers seek refuge at Mexico embassy,”* AP News, Oct. 15, 2019.⁴ *See, generally, “What Happens Next in Ecuador,”* TIME, Oct. 18, 2019.⁵ It appears beyond any real dispute that current President Lenin Moreno has so attempted to align himself with and curry favor from President Trump that even someone bent on flight would not view Ecuador as an option. *See “Remarks by Vice President Pence and President Lenin Moreno of the Republic Of Ecuador in Joint Press Statements,”* June 28, 2018⁶ (Vice President Pence: “Prior to your election [in 2017], our nations had experienced 10 difficult years where our people always felt close but our governments drifted apart. But over the past year, Mr. President, thanks to your leadership and the actions that you’ve taken have brought us closer together once again . . . And you have the appreciation of President Trump and the American people. With your leadership in Ecuador and President Trump’s in the United States, we are opening a new chapter in the relationship between the United States of America and Ecuador”).

While representatives of both the Plaintiffs in the civil case and Chevron necessarily met with the government in Ecuador because the government owned much of the property despoiled by Chevron, those meetings have nothing to do with the issue before the Court; it was proper for counsel on both sides to press their views to an essential party to any resolution. Mr. Donziger has no ties with anyone in Ecuador (or anyplace else in the world) that would have any incentive to help him violate American law, even if Mr. Donziger could somehow find his way to Ecuador through multiple Central and South American countries without a passport. Mr. Donziger, of course, returned to this country immediately upon learning of the charges and has engaged himself in every dimension of this case for the past four months, including appeals to the Circuit from findings of civil contempt based on purported non-compliance with the very orders that Ms. Glavin says establish his risk of flight. Ms. Glavin’s argument makes no sense; engaging appellate review of purported non-compliance is self-evidently the opposite of flight. Arguments to the contrary serve to nullify the presumption of innocence and turn a blind eye to Mr. Donziger’s multi-year record of court appearances even as findings of civil contempt were made and criminal contempt was repeatedly threatened.

³ Available at https://www.washingtonpost.com/world/in-ecuador-assanges-expulsion-reflects-a-shifting-political-tide/2019/04/11/7b50e852-5c66-11e9-98d4-844088d135f2_story.html.

⁴ Available at <https://apnews.com/1bde9f53a58847c083daed633a3c4dc2>.

⁵ Available at <https://time.com/5705202/what-happens-next-in-ecuador/>.

⁶ Available at <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-president-lenin-moreno-republic-ecuador-joint-press-statements/>.

Mr. Donziger is here, he is eager to establish his innocence, and he will be here through resolution of this case: monitoring and confinement are unnecessary. The Court has a variety of options, including Officer Harmon's recommended curfew and even increase of the amount of the bond. Tomorrow, I will urge the Court to reconsider its ruling.

We appreciate the Court's consideration.

Respectfully submitted,

/s/

Andrew J. Frisch

cc: Ms. Rita Glavin
Special Prosecutor